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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Expedited Rulemaking)
for Operations Support Systems)
of LCI and CompTel)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98 ✓

RM-9101

COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS INC.

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

ATTORNEYS FOR TIME WARNER
COMMUNICATIONS HOLDINGS INC.

July 10, 1997

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COMMENTS OF TIME WARNER COMMUNICATIONS HOLDINGS INC.

Time Warner Communications Holdings Inc. ("TWComm") hereby files these comments in response to the above-captioned Petition for Rulemaking.¹

I. INTRODUCTION AND SUMMARY

The Commission should grant the LCI/CompTel Petition for the initiation of a rulemaking on access to ILEC operations support systems ("OSS"). In addition to the issues raised in the Petition, the rulemaking proceeding should also address the OSS requirements of competitive LECs ("CLECs"), such as TWComm, that neither resell incumbent LEC ("ILEC") service nor purchase switching from ILECs as an unbundled network element ("UNE"). The Communications Act, sound policy and TWComm's experience support the necessity of national rules that encompass the needs

¹ See Petition for Expedited Rulemaking By LCI International Telecom Corp. ("LCI") and Competitive Telecommunications Association ("CompTel") filed in CC Docket No. 96-98 (May 30, 1997) ("Petition").

of all CLECs, including those that provide their own independent switching (hereafter referred to as "facilities-based" CLECs).

II. THE FCC SHOULD PROMPTLY INITIATE A RULEMAKING ON THE PROVISION OF ACCESS TO OSS.

TWComm strongly supports, with the modifications explained below, the Petition for rulemaking submitted by LCI and CompTel. The inability of CLECs to obtain access to ILEC OSS in a manner that will support the competitive provision of local telephone service has emerged as the single most important interconnection issue. Moreover, it has become all too clear during the months that have followed the release of the Interconnection First Report and Order, that the current FCC rules are insufficient to insure adequate access to OSS. It is not enough for the Commission to state that nondiscriminatory access to OSS is in general technically feasible and must be provided to CLECs. The enormous complexity involved in obtaining OSS access provides ILECs with endless opportunities to make unfounded claims of technical infeasibility regarding the details of implementation. Such claims force CLECs to contest issues on which they and the regulators suffer from a chronic asymmetry of information. Moreover, the lack of adequate penalties for nonperformance make it very difficult to enforce terms of access that have been negotiated. Without penalties, ILECs have no economic incentive to bargain in good faith. The threat of substantial penalties would deter anticompetitive behavior.

Nor will the Section 271 checklist obligation to provide adequate OSS access solve the problem. First, there is the obvious problem that GTE and other independents do not have to

meet this obligation. Even as to the BOCs, though, the Section 271 process will not be sufficient unless the Commission establishes a comprehensive rulemaking to establish specific, national benchmarks and measures² for access to ILEC OSS. Indeed, OSS presents a classic example of the need for separate proceedings to define the necessary criteria to satisfy the Section 271 checklist requirements.³ Moreover, as the Department of Justice has explained,⁴ the establishment of OSS rules now, before interLATA relief is granted, would enable the Commission to work with the BOCs while they still have some incentive to cooperate in setting benchmarks, measures and standards.⁵

² TWComm uses the terms "performance benchmarks" and "measures" as defined by the Justice Department in the Addendum to its Evaluation of the SBC Section 271 Application for Oklahoma. See Justice Department Addendum, CC Docket No. 97-121 at 4-5 ("a 'performance benchmark' is a level of performance to which regulators and competitors will be able to hold a BOC;" "performance measures" are the "specific means and mechanisms necessary to measure [the BOC's] performance"). Of course, as discussed below, such benchmarks and measures should apply to all ILECs, not just BOCs. Finally, TWComm uses the phrase "OSS standards" to mean the technical standards adopted by industry groups such as the Ordering and Billing Forum, the T1 Committee and the Electronic Communications Implementation Committee.

³ See Comments of Time Warner Communications Holdings Inc., CC Docket No. 97-121 at 8-23 (May 1, 1997) (explaining the need for generic checklist rulemaking proceedings).

⁴ See Affidavit of Marius Schwartz at ¶¶ 137-148 submitted as Exhibit 1 to the Justice Department Evaluation in CC Docket No. 97-137 (explaining the need to establish interconnection rules before interLATA entry is permitted); Justice Department Evaluation, CC Docket No. 97-121 at 45-48 (describing the need for generic rules for OSS before interLATA relief is granted).

⁵ Of course, any such rules must apply to all ILECs subject to the unbundling requirements of Section 251(c)(3).

While LCI and CompTel have therefore taken a critical first step in requesting a rulemaking on OSS, their Petition does not go far enough. The petitioners have understandably focused on the needs of resellers and purchasers of unbundled elements, and do not discuss the OSS functionalities required by facilities-based entrants like TWComm. But in order to provide competitive local service, TWComm needs access to ILEC OSS functionalities that are not covered in the Petition. Accordingly, in the sections that follow, TWComm describes the distinctive OSS requirements of facilities-based carriers and explains why any OSS rulemaking must include these issues in addition to the OSS issues covered in the Petition.

III. FACILITIES-BASED CLECS SUCH AS TWCOMM REQUIRE OSS FUNCTIONALITIES THAT ARE DISTINCT FROM THOSE REQUIRED BY OTHER CLECS.

TWComm is entering the local telephone market primarily as a facilities-based carrier. The company has constructed SONET-based fiber rings in 18 major markets, and will have completed its switch deployment in each of those markets by the end of 1998. TWComm's customers will be served via Time Warner's cable loop facilities, and TWComm has contracted with a third-party vendor for SS7 and operator services.

While TWComm needs many of the same OSS functionalities discussed in the Petition, the company has a set of OSS needs that are distinct from those of non-facilities-based carriers (i.e., those that do not provide independent switching). These are absolutely critical to the success of TWComm's business. In the subsections that follow, TWComm provides in some detail the

OSS requirements of facilities-based carriers. In general, TWComm needs OSS access associated with the following: (1) trunk groups for traffic termination, access to E911, directory assistance (where necessary) and operator services (where necessary); (2) physical collocation, virtual collocation and mid-span meet point arrangements; (3) interim number portability until long-term number portability is available; (4) White and Yellow pages directory listings for TWComm customers; (5) timely disconnect of new TWComm customers from ILEC services; (6) exchange of traffic termination measurement data and data on exchange access traffic terminating over interim number portability arrangements; and (7) trunk group maintenance. Several of these requirements, most notably the need to support the exchange of traffic between networks, are not relevant to non-facilities-based carriers. Nonetheless, essentially the same performance principles recommended by the Local Competition Users Group ("LCUG") can be applied to the facilities-based requirements.

It should be pointed out that there may be some areas where facilities-based CLEC OSS requirements are more limited than those of non-facilities-based carriers for the same functionality. For example, as mentioned below, until national technical standards for electronic interfaces are developed, TWComm needs reliable manual interfaces for ordering and provisioning. Other carriers, including LCI, that already possess substantial back office resources of their own, have requested (and the Commission has required) electronic interfaces

before national standards are adopted. This difference simply reflects a different business strategy. TWComm finds it necessary to invest resources initially in building highly reliable, state-of-the-art telephone networks instead of building from scratch electronic bonding capabilities that will likely be replaced or modified once national standards are adopted. But TWComm should not be penalized for having chosen this approach. This is especially so since facilities-based entry promises far more consumer benefits than entry through resale and leased UNEs. The Commission should therefore require ILECs to meet both the needs of carriers that can support electronic interfaces from the start and those that must initially rely on manual procedures. Manual interfaces that may be required range from processing orders via facsimile to PC dial-up arrangements with web-based interfaces.⁶

A. Ordering And Provisioning

As a facilities-based carrier, TWComm does not generally need the same type of customer-specific ordering interfaces for ordering and provisioning that are described in the Petition.⁷ There are of course exceptions to this general rule such as

⁶ Most ILECs are now demanding that CLECs exclusively use their existing electronic interfaces, which will eventually migrate to industry-standard EDI interfaces. Since the existing interfaces have been developed with no standardization, CLECs must purchase software and equipment for, and train personnel on, each of these diverse systems.

⁷ It should be noted that TWComm will use some UNEs to reach certain "off-net" customers, where the building of facilities is not warranted.

orders for interim number portability and directory listings, both of which require customer-specific transactions. TWComm's primary ordering/provisioning needs, however, are adequate trunking facilities for the exchange of aggregate customer traffic with the ILEC and Interim Number Portability ("INP"). OSS functionalities to support ordering transactions associated with the exchange of traffic are dependent on an accurate estimate of trunking needed for overall traffic requirements. Most of the general principles for ordering and provisioning described by the LCUG in Appendix A of the Petition apply to interconnection trunks just as they apply to ordering and provisioning for carriers without any independent switching capability. LCUG requirements applicable to facilities-based carriers include the following:⁸

- The ILEC must provide the same level of ordering and provisioning support to CLECs as it provides to itself or its customers. The ILEC must provide reports detailing prescribed performance results for the ILEC itself, all CLECs on average, and the individual CLEC, on at least a monthly basis with sufficient historical data to allow trending.
- INP must be provided in a manner which will allow a CLEC to provide service to customers in a timeframe at parity with the ILEC.
- The ILEC must automatically generate a disconnect order upon CLEC notification to migrate a subscriber to CLEC service.
- The ILEC must provide comprehensive support for CLEC ordering/provisioning activities, including but not limited to the provision of firm order confirmation and design layout reports.

⁸ TWComm will likely need access to some pre-ordering functions as well, such as access to customer service records (CSR).

- The ILEC must provide industry standardized electronic interfaces (such as Access Service Request for trunking facilities) to support ordering and provisioning processes. Nonetheless, until such time as industry standard interfaces are established and CLECs can develop their systems and processes, ILECs should be required to support manual interfaces.
 - ILECs must provide terminating trunking facilities to the CLEC network so that ILEC customers calling CLEC customers can complete their calls. These facilities must be provisioned in sufficient quantity to meet standard industry blocking criteria.
- B. Connectivity Billing And Recording And Provision of Customer Usage Data.**

Since facilities-based service providers do not rely on the ILEC for customer usage data, most of the requirements set forth by the LCUG under this category do not apply to facilities-based carriers. As discussed above, however, facilities-based carriers require OSS support for the exchange of traffic termination measurement data and the exchange of access traffic data for calls terminating over INP arrangements. The data do not need to be exchanged on a daily basis, but rather can be exchanged on a monthly or some other agreed-upon basis.

C. Maintenance

As with ordering and provisioning, the primary maintenance interface with the ILEC for facilities-based CLECs involves interconnecting trunk facilities. Nonetheless, virtually all of the requirements identified by the LCUG are relevant to the maintenance requirements of these facilities. In addition, ILECs must provide terminating trunking facilities to the CLEC network so that the ILEC customers calling CLEC customers can have their calls completed. These facilities must be maintained in the same

manner and in the same priority as all other ILEC trunking facilities.

The importance of maintaining these facilities cannot be overemphasized. Since CLECs initially have only a small number of customers, nearly all calling to or from CLEC customers traverses these facilities. For example, TWComm recently experienced an outage in over 600 ILEC interconnection trunks for a period of four hours before the ILEC in question responded. In those four hours, approximately 36,000 TWComm customer calls were blocked.

D. Miscellaneous Services And Functions

The requirements described under this category by the LCUG are relevant to facilities-based providers, as well, although the operator services and directory assistance requirements are dependent on whether the CLEC relies on the ILEC or provides these functions itself.

IV. THE COMMISSION'S OSS RULEMAKING SHOULD ENCOMPASS THE OSS ACCESS REQUIREMENTS OF ALL CLECS, INCLUDING FACILITIES-BASED CLECS.

The Commission's rules, sound policy and TWComm's experience in the competitive market support the need for national OSS benchmarks, measures and standards that encompass all CLEC needs.

A. The Application Of OSS Rules To All CLECs Is Consistent With Section 251(c)(3) And With The Commission's Interconnection Rules.

There can be no question that ILECs are legally obligated to provide facilities-based carriers with the OSS functionalities they require to compete in the local market. Although its discussion of OSS in the Interconnection Order focused on the

needs of resellers and purchasers of UNEs, the Commission concluded in that order that OSS constitutes a UNE, separate and apart from any access to OSS that may be required to support resale and the purchase of other UNEs.⁹ Further, Section 251(c)(3) requires that ILECs provide to "any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access" to UNEs (emphasis added).

Thus, as telecommunications carriers, facilities-based carriers are eligible to obtain access to ILEC OSS. Moreover, the Commission has interpreted the Section 251(c)(3) nondiscrimination obligation to include (assuming technical feasibility) both an obligation to provide UNEs on terms and conditions that are equal to those under which the ILEC provides the UNE to itself and an obligation to provide UNEs to all telecommunications carriers on equal terms and conditions.¹⁰ ILECs therefore have an independent obligation to provide facilities-based carriers access to OSS on terms and conditions equal to the manner in which the ILEC provides OSS to itself and on a par with the access granted to non-facilities-based

⁹ See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 at ¶ 516 (1996) ("Interconnection First Report and Order").

¹⁰ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Second Order on Reconsideration, 11 FCC Rcd 19738 at ¶ 9 (1996).

competitors. The FCC's OSS rules must reflect the full scope of this legal obligation.

Moreover, this result is consistent with the Commission's overall approach to establishing the preconditions to competitive entry. In the Interconnection First Report and Order, the Commission determined that the Telecommunications Act of 1996 requires that FCC regulations treat all forms of competitive entry equally.¹¹ Without such a result, facilities-based carriers cannot succeed.

B. Sound Policy And TWComm's Experience Support The Need For National OSS Rules For All CLEC Entry Strategies.

Beyond the pure legal obligation to do so, it would be extremely bad policy for the Commission not to consider and address the OSS needs of facilities-based carriers as part of a general rulemaking on the subject. Although facilities-based carriers may require access to ILEC OSS to support fewer functionalities, as explained below, the inability to obtain such access can be very damaging to CLECs such as TWComm.

1. The ILECs' Incentives Regarding OSS Access Are The Same For Facilities-Based CLECs As For Other CLECs

ILECs have an incentive and ability to prevent substantial facilities-based entry by denying CLECs like TWComm adequate OSS support. In cases such as interim number portability where the ILEC can target customers switching to the new entrant, the ILEC

¹¹ See Interconnection First Report and Order at ¶ 12 (noting the Commission's obligation "to establish rules that will ensure that all pro-competitive entry strategies may be explored").

has the well-understood incentive to make changing service providers as difficult as possible. But even where, as is generally the case, TWComm needs OSS access to support intercarrier transactions, breakdowns in OSS support serve to preserve the ILECs' market dominance. Thus, problems with trunks used to exchange traffic carried on the CLEC and ILEC networks harm CLECs more than ILECs because (1) as mentioned, a much higher percentage of calls originating and terminating on the CLEC network must be carried over those trunks; (2) CLEC subscribers will likely attribute degradation in service quality to the CLEC, regardless of whether the problem is caused by the CLEC; and (3) the harm caused to the CLEC's reputation will likely be far more costly than any contractual penalties for which the ILEC may be liable.

TWComm has experienced first-hand the ILECs' incentive and ability to deny adequate OSS support. Like other new entrants, TWComm is finding that ILECs are generally reluctant to agree to detailed performance rules, and are unwilling to agree to any meaningful penalties for non-performance. Where TWComm has discussed benchmarks and measures with ILECs, the incumbents have only been willing to discuss standards applicable to end users, but have been unwilling to entertain the notion of intercarrier performance standards. But while many of the OSS provisions in TWComm's interconnection agreements do not enable the company to provide service on a par with the ILEC, TWComm has often been forced to accept them so that it can enter the market in a timely

manner without spending the additional time and money required for arbitration.

TWComm has had an especially difficult problem with INP arrangements. For example, installation intervals for remote call forwarding ("RCF") in TWComm's interconnection agreements have been typically too long because they are based on the use of RCF as a discretionary end user service, rather than as a means of providing interim number portability.

TWComm's experience has also shown that, even where adequate benchmarks and measures have been negotiated, they are useless without adequate liquidated damages provisions. Absent such damages, ILECs often simply ignore OSS contractual benchmarks and measures. When TWComm has confronted ILECs with such failures, the response has often been that the contractual performance benchmarks in question were simply unrealistic and should be changed.

Thus, even where installation intervals have been negotiated for INP, due dates are consistently missed. In some instances ILECs have actually cut-over the INP arrangement earlier than the quoted date without notifying TWComm. The result is that the customer is left without service and looks to its new provider for an explanation.

Trunk forecasting for the exchange of traffic has also been a problem for TWComm in the absence of adequate penalties for breach of contract. In one case, a large university with a significant amount of terminating traffic switched service to TWComm. Although TWComm provided trunk forecasting data to the

ILEC and complied with the requirements specified in the interconnection agreement for provisioning intercarrier trunks, the ILEC provisioned inadequate capacity to meet the forecasts. When actual traffic volume approached TWComm's forecasts, calls to the university were blocked at a rate far in excess of the level set forth in the interconnection agreement. When TWComm complained, ILEC representatives stated that they did not believe that TWComm's initial forecasts had been reasonable.

2. National OSS Rules Will Lower Entry Barriers For Facilities-Based Entrants.

National benchmarks, measures and standards will lower entry barriers for facilities-based CLECs just as they will for other CLECs. Since TWComm is a national competitor, operating in 18 markets, it must negotiate interconnection agreements with multiple incumbent LECs. While ILECs insist on generally uniform operational procedures and standards in dealing with multiple competitors, competitors dealing with multiple ILECs have no leverage to insure consistent performance standards across ILECs. To the extent that competitors such as TWComm are forced to conform to multiple systems and requirements of individual ILECs, the costs of competitive entry are significantly increased.¹²

It follows that national OSS rules, especially requiring compliance with national OSS technical standards, that account for the needs of all CLECs will help to lower a significant entry

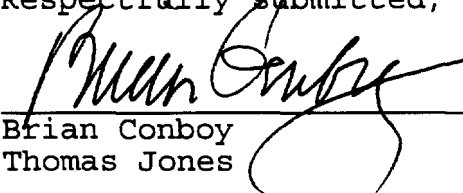
¹² See *id.* at ¶ 527 ("Ideally, each incumbent LEC would provide access to support systems through a nationally standardized gateway. Such national standards would eliminate the need for new entrants to develop multiple interface systems, one for each incumbent").

barrier for TWComm. If such rules are established, TWComm will be able to focus more on its relationship with customers and less on its relationships with ILECs.

V. CONCLUSION

For the reasons set forth above, TWComm respectfully requests that the Commission grant the immediate relief requested in the LCI/CompTel Petition for Rulemaking and initiate an expedited rulemaking on national benchmarks, measures and standards for OSS subject to the modifications described herein.

Respectfully submitted,



Brian Conboy
Thomas Jones

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

ATTORNEYS FOR TIME WARNER
COMMUNICATIONS HOLDINGS INC.

July 10, 1997

CERTIFICATE OF SERVICE

I, Catherine M. DeAngelis, do hereby certify that on this 10th day of July, 1997, copies of the foregoing "Comments of Time Warner Communications Holdings Inc." were delivered by hand, unless otherwise indicated, to the following parties:

Commissioner Rachelle Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

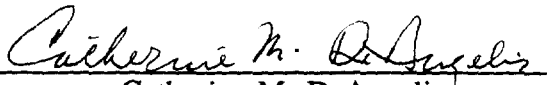
International Transcription Service
Room 140
2100 M Street, N.W.
Washington, D.C. 20554

Anne K. Bingaman *
Douglas W. Kinkoph
LCI INTERNATIONAL TELECOM CORP.
8180 Greensboro Drive, #800
McLean, VA 22102

Genevieve Morelli *
Executive Vice President, General Counsel
COMPTel
1900 M Street, NW
Washington, DC 20036

Eugene D. Cohen *
Bailey Campbell PLC
649 North Second Avenue
Phoenix, AZ 85003

Rocky Unruh *
Morgenstein & Jubelirer
Spear Street Tower
San Francisco, CA 94105


Catherine M. DeAngelis

*Delivered by first-class, postage pre-paid mail